

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicant:** Coppencan Nominees Pty Ltd
(represented by Mr Peter Fraser of Dwyer Durack Lawyers)
- Respondent:** Coranna Rise Pty Ltd
(represented by Mr Mario Sequeira of Hospitality Total Services (Aust) Pty Ltd)
- Objectors:** Ms Erin Frances Hughes
Ms Janeane Anne Mason
Ms Catherine Jem Matthews
Ms June Margaret Galbraith
The Corrigin District Club
Ms Caron Green
Mr Steven Warwick
- Commission:** Mr Eddie Watling (Presiding Member)
Ms Helen Cogan (Member)
Mr Alex Zilkens (Member)
- Matter:** Application pursuant to section 25 of the *Liquor Control Act 1988*, for a review of a decision by the delegate of the Director of Liquor Licensing to approve the conditional grant of a liquor store licence for premises to be known as IGA Plus Liquor, Corrigin.

Premises: IGA Plus Liquor Corrigin
6 Campbell Street
Corrigin

Date of Hearing: 14 August 2015

Date of Determination: 20 November 2015

Determination The application for review is refused.

Authorities referred to in Determination:

- *Cunderdin Farmers Co-operative Company Ltd in relation to Cunderdin IGA (Decision A206551) dated 11 May 2010*
- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* [2007] WACA 175
- *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241
- *Harold Thomas James Blakely v Director of Liquor Licensing* LC 44/2010

Background

- 1 On 16 October 2014, Coranna Rise Pty Ltd (“the respondent”) lodged an application pursuant to sections 47 and 62 of the *Liquor Control Act 1988* (“the Act”) for the conditional grant of a liquor store licence for premises at 6 Campbell Street, Corrigin to be known as IGA Plus Liquor Corrigin.
- 2 On 26 November 2014, an objection to that application was lodged by Copenclan Nominees Pty Ltd (“the applicant”), the licensee of the Corrigin Hotel. A further seven (7) objections were also lodged on the same date, six (6) from individuals and one (1) from the Corrigin District Club.
- 3 On 19 May 2015, the delegate of the Director of Liquor Licensing (“the Director”) conditionally granted the application for the licence.
- 4 On 18 June 2015, the applicant applied to the Liquor Commission (“the Commission”,) pursuant to section 25(1) of the Act, for a review of the decision of the Director.
- 5 A hearing before the Commission was held on 14 August 2015.

Submissions on behalf of the applicant

- 6 The applicant submitted that the Director erred in finding that the application for a grant of a liquor store licence was in the public interest, specifically in regard to the analysis of the applicant’s consumer requirement evidence and the findings made by the Director with respect to the existing levels of alcohol related harm and ill-health.
- 7 It was also submitted that the Director made an important error of fact in concluding that the Corrigin Hotel does not have a dedicated browse area for its packaged liquor. The Corrigin Hotel does in fact provide a dedicated browse area for customers wishing to purchase packaged liquor and that the proposed liquor store was incorrectly assessed as providing a service which was wrongly believed not to be available within the locality.
- 8 Whilst the applicant has relied on a number of review grounds, the thrust of the objection is that:
 - (a) consumer requirement evidence relied upon by the respondent was not of sufficient probative value to demonstrate that consumers had a requirement for the services proposed to be offered by the applicant;

- (b) there is existing alcohol-related harm being experienced by at-risk groups within Corrigin; and
 - (c) when the existing levels of harm are weighed against the evidence of consumer requirement relied upon by the respondent, it should not be found that the grant of a liquor store licence is in the public interest.
- 9 It was submitted that in regard to consumer requirement evidence submitted by the respondent, the initial survey included in the Public Interest Assessment (“PIA”) is fatally flawed as it fails to address the requirements of consumers for packaged liquor. Rather, the respondent would appear to rely upon this survey as evidence of the need for one-stop shopping. In assessing this requirement, regard must be had to the existence of the applicant’s hotel, located 100 metres away.
- 10 It was submitted that the second survey is also fatally flawed, as the questionnaire does not ask them to address:
 - (a) what their current requirements for packaged liquor are; or
 - (b) whether these requirements are being satisfied by the existing stores within the locality.
- 11 It was submitted that the letters of support from the wine producers are nothing more than that, letters of support for a store that may stock their products.
- 12 With regard to the potential for increased harm and ill-health as a consequence of granting this liquor store licence, it was submitted that the evidence of Mr Don Collard, an elder of the Mallee Aboriginal Corporation, should be considered expert evidence because of his knowledge of issues affecting the Aboriginal community within Corrigin.
- 13 The evidence with respect to the existing alcohol-related harm or ill-health being experienced by at risk groups in Corrigin can be broadly categorised as:
 - (a) Concerns with street drinking and associated violence;
 - (b) Concerns with intoxicated persons causing disturbance in shopping centres and on the street during the day;
 - (c) Concerns with both bottles and damage in public streets and parks; and
 - (d) Concerns that the park across the road from the proposed liquor store will be a site of public drinking and disorderly behaviour due to its proximity to the liquor store.

- 14 It was submitted that the evidence demonstrates that there is an existing concerning level of alcohol-related harm or ill-health occurring within the locality due to the use of liquor and that the introduction of another packaged liquor facility will result in an unacceptable increase in such levels.
- 15 Accordingly, in all the circumstances the grant of the application for a liquor store licence is not in the public interest.

Submissions on behalf of the respondent

- 16 The respondent submitted that the Director did not err in his decision to approve the liquor store licence application and gave appropriate weight to the evidence provided by the applicant for the licence.
- 17 The respondent submitted that there is a requirement by the consumers of liquor and related services that is not being met in Corrigin, as there is currently no dedicated browse packaged liquor facility (liquor store) in the locality.
- 18 The proposed liquor store will be 189m², sited adjacent to the Corrigin IGA store where there will be only a single entry door to the liquor store. Patrons from the Corrigin IGA supermarket will not be able to enter the liquor store directly from the supermarket, however, patrons of the liquor store may enter the Corrigin IGA supermarket after completing their purchases. It is understood that this harm minimisation strategy to avoid impulse purchasing (if any) is consistent with comments made by the office of the Executive Director of Public Health in relation to liquor stores in close proximity to supermarkets.
- 19 It was submitted that patrons will have the opportunity for one-stop convenience shopping as they will be able to do their grocery shopping at the Corrigin IGA and also purchase their household liquor needs at the only browse facility in the locality.
- 20 There is consumer support for competition and choice, the convenience of one-stop shopping and not having to purchase from premises (Corrigin Hotel) that also allows for on-premises consumption of alcohol and TAB gambling during opening hours. The respondent provided evidence in the form of consumer surveys and comments which demonstrate that only a small percentage (6.25%) of those surveyed indicated that the current packaged liquor services in Corrigin met their requirements.

- 21 The proposed IGA Plus Liquor Corrigin will also cater to those with specific dietary requirements such as gluten and dairy intolerance, as well as stocking some preservative free and organic wines. A range of low to mid alcoholic beer and wine will also be available as part of an ongoing commitment to providing alternatives to full strength alcoholic products.
- 22 The respondent submitted that a liquor store in Corrigin will provide a dedicated browse facility, regular tastings and increased range of liquor products, and these are currently not available in the locality of Corrigin. The proposed liquor store will cater to the requirements of consumers of liquor related services with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State in that:
- (a) the respondent (licence applicant) is committed to supporting the brand and reputation of quality suppliers of local WA produced beer, cider, spirits and wine not readily available in the locality;
 - (b) the 80 sample consumer surveys completed by members of the local community indicate the need for the proposed IGA Plus Liquor Corrigin, to provide choice and convenience within the locality;
 - (c) the option to request brands/products that are not being carried by the proposed IGA Plus Liquor Corrigin will enable patrons to request their particular brands and products;
 - (d) Corrigin is a popular stopover when visiting Hyden's Wave Rock and the seasonal wildflowers of the area, or travelling from Perth or Kalgoorlie;
 - (e) the respondent is committed to catering for the rising number of consumers who have food allergies and welcomes the opportunity to develop this under-developed side of the liquor industry;
 - (f) the respondent will support the growing interest in food and beverage matching by providing knowledgeable staff who can assist customers with their alcohol purchases.
 - (g) the safe and convenient browse facility along with the opportunity to offer tastings to patrons will assist in the development of the liquor industry in Corrigin by offering an amenity enjoyed by consumers across the state.
- 23 As part of the PIA process there had been wide community consultation including WA Police Liquor Enforcement Unit, WA Department of Health Drug and Alcohol Office,

Corrigin District Primary and High School, Corrigin Playgroup, Central Agecare, Corrigin District Hospital, St Therese Catholic Church, Shire of Corrigin and Corrigin Police State, none of which intervened or objected to the application.

- 24 Finally, the respondent referred to the decision of the Director of Liquor Licensing in A206551 in relation to Cunderdin IGA dated 11 May 2010 (“the Cunderdin IGA decision”), and submitted that the public interest considerations for the licensing authority included having regard to the range of licence types available to cater for the requirements of consumers of liquor and related services, and whether the overall standard of services and facilities would decline as a result of granting the application. The respondent raised the point that the licensing authority is not to have regard to the protection of existing liquor outlets.

Submissions by objectors (other than the applicant)

- 25 None of the objectors provided additional submissions to those initially lodged in respect to the liquor licence application, however, each remains a party to the review process.
- 26 In general terms the grounds for objection are based on section 74 of the Act and more specifically express concerns as to the impact on harm and ill-health and an increase in anti-social behaviour in the locality. In particular there are concerns as to an increase in the consumption of alcohol within the public park area opposite the site of the proposed liquor store.
- 27 The objection from the Corrigin District Club also expressed concern as to the impact of an additional packaged liquor licence on the small number of existing liquor outlets in a small town with a population of around 1,000.

Determination

- 28 Section 25(2c) of the Act provides that when conducting a review of a decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision.
- 29 In conducting a review pursuant to section 25 of the Act, the Commission is not required to find an error in the Director’s decision, it is required to undertake a full

review of the merits of the materials before the Director and make its own determination based upon those materials (*Hancock v Executive Director of Public Health* [2008] WASC 224).

30 Pursuant to section 25(4) of the Act, the Commission may:

- (a) affirm, vary or quash the decision subject to the review;
- (b) make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance;
- (c) give directions as to any questions of law reviewed, or to the Director to which effect shall be given; and
- (d) make any incidental or ancillary order.

31 Section 38(2) of the Act provides that an applicant must satisfy the licensing authority that granting the application is in the public interest. To discharge its onus under Section 38(2) of the Act, an applicant must address both the positive and negative impacts that the grant of the application will have on the local community.

32 Determining whether the grant of an application is “in the public interest” requires the Commission to exercise a discretionary value judgement confined only by the subject matter and the scope and purpose of the legislation (refer *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* [2007] WACA 175 and *Palace Securities Pty Ltd v Director of Liquor Licensing* (1992) 7 WAR 241).

33 It is generally accepted by all parties that:

- (a) Corrigin is a small country town with a population of approximately 1,000 people. Between 800 and 850 of those people are adults. Of Corrigin’s total population, 30 are indigenous.
- (b) Within Corrigin there are 3 existing licensed premises:
 - (1) Corrigin Hotel;
 - (2) Corrigin District Club; and
 - (3) Corrigin Golf Club.
- (c) Of those existing licensed premises, the Corrigin Hotel is the only premises that sells packaged liquor to the general public. The Corrigin District Club and the Corrigin Golf Club sell packaged liquor to their respective members but not to the general public. At the hearing of the application, counsel for

the applicant informed the Commission that the Corrigin Hotel opens at 11am and that this is a self-imposed opening time.

- 34 In the Cunderdin IGA decision as referred to by the respondent, the Director considered what factors were included in public interest considerations. The Director determined that the licensing authority should have regard to the range of licence types available to cater for the requirements of consumers for liquor and related services, and whether the overall standard of services and facilities would decline as a result of granting the application. The licensing authority, however, is not to have regard to the protection of existing outlets. The Commission concurs with this approach.
- 35 In the Cunderdin IGA decision, the Director also considered that the licensing authority is to have regard to the expectations and contemporary standards of consumer requirements for packaged liquor and related services. Consumers have a requirement for a range of licence types. As regards the Corrigin premises subject to the application, the general public of Corrigin currently have access to the Corrigin Hotel for their liquor requirements (only open from 11am) and the Corrigin District and Golf Clubs (the clubs are only available to the members of the general public who are also members of those clubs).
- 36 The respondent's process undertaken to gauge support for a proposed liquor store was part of the respondent's public interest assessment submission. The respondent received various responses which were tendered as evidence that supported its case that the application for the grant of a liquor store licence was in the public interest. Comments from members of the general public referred to the fact that a proposed liquor store would bring healthy competition and greater choice, and that earlier opening hours would be an additional convenience.
- 37 Further, the respondent provided responses from residents that Corrigin has an older population who would be far more at ease going to an IGA Plus liquor store for their liquor purchases than into a hotel environment – the Corrigin Hotel is the only place in town from which the general public can purchase liquor. It appears that there is support for a liquor store that opens early and that it will enable customers to do their grocery shopping and alcohol shopping together.
- 38 The object of the Act set out in section 5(1)(c) concerns the proper development of the liquor industry in the State. The development of the proposed liquor store in Corrigin is consistent with the object in section 5(2)(a) of the Act and the licensing authority is to

have regard to facilitating the use and development of licensed facilities reflecting the diversity of the requirements of consumers in Western Australia.

- 39 In the view of the Commission, as there are only three licensed outlets in Corrigin, two of which do not supply to the general public, there is no diversity of packaged liquor outlets available to the general public. Granting a liquor store licence to IGA Plus Liquor Corrigin would develop licensed facilities in the area that reflect the diversity of the requirements of consumers. Members of the general public of Corrigin who do not wish to attend the Corrigin Hotel to purchase liquor (and who are not members of the District and Golf Clubs) currently need to leave Corrigin to purchase liquor.
- 40 Having considered the submissions and material available to the Director at the time of the application for a liquor store licence, the Commission finds that the proposed liquor store will cater for the requirements of consumers in Corrigin, in relation to availability of liquor to the general public. The proposed liquor store will bring competition to the market in Corrigin, provide a larger range of products thereby giving the public more choice, convenience for consumers, and at operating times not provided by the existing licensed premises.
- 41 With regard to the potential that the granting of this licence will increase the level of harm and ill-health in Corrigin, or will have an adverse effect on the amenity or cause offence, annoyance, disturbance or inconvenience to people who reside or work in the vicinity of the proposed licensed premises (section 74(1) of the Act), the Commission is not persuaded that, on the balance of probabilities, the potential for such outcomes outweighs the positive aspects of the liquor licence application.
- 42 The Commission therefore finds that the objectors have not established that, on the balance of probabilities, the granting of a liquor store licence to IGA Plus Liquor Corrigin is not in the public interest.
- 43 The applicant Copenclan Nominees Pty Ltd (an objector to the liquor store licence application) is the licensee of the Corrigin Hotel. The private interests of an existing liquor store do not equate to, and should not be confused with the public interest (refer to *Harold Thomas James Blakely v Director of Liquor Licensing* LC 44/2010). Further, the licensing authority is not to have regard to the protection of existing liquor outlets (as per the *Cunderdin IGA decision*).

- 44 Having considered all the material to which the Director had regard to when making his decision, it is the Commission's view that the conditional grant of a liquor store licence for IGA Plus Liquor Corrigin is in the public interest.
- 45 Accordingly, the Commission has determined that the application for review be refused and the decision of the Director affirmed.



EDDIE WATLING
PRESIDING MEMBER